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Chevrolet at the Avenues), KP Motors
L.L.C. (d/b/a Coggin Pontiac-GMC of
Orange Park), CK Chevrolet LLC (d/b/a
Coggin Chevrolet), and CK Motors LLC
(d/b/a Coggin Pontiac-GMC-Buick)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re : Chapter 11
GENERAL MOTORS CORP, et al., :
Debtors. : Case No. 09-50026 (REG)
: (Jointly Administered)
:
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**PROTECTIVE OBJECTION OF ASBURY MS CHEV L.L.C. (D/B/A GRAY-DANIELS
CHEVROLET), ASBURY ST. LOUIS CADILLAC L.L.C. (D/B/A PLAZA CADILLAC),
COGGIN CHEVROLET L.L.C. (D/B/A COGGIN CHEVROLET AT THE AVENUES),
KP MOTORS L.L.C. (D/B/A COGGIN PONTIAC-GMC OF ORANGE PARK), CK
CHEVROLET LLC (D/B/A COGGIN CHEVROLET), AND CK MOTORS LLC (D/B/A
COGGIN PONTIAC-GMC-BUICK) TO DEBTORS' PROPOSED CURE AMOUNTS**

1. Asbury MS Chev L.L.C. (d/b/a Gray-Daniels Chevrolet), Asbury St. Louis
Cadillac L.L.C. (d/b/a Plaza Cadillac), Coggin Chevrolet L.L.C. (d/b/a Coggin Chevrolet at the
Avenues), KP Motors L.L.C. (d/b/a Coggin Pontiac-GMC of Orange Park), CK Chevrolet LLC
(d/b/a Coggin Chevrolet), and CK Motors LLC (d/b/a Coggin Pontiac-GMC-Buick) collectively,

the “Asbury GM Dealers”) file this protective objection regarding Cure Amounts¹ with respect to the Debtors’ Assumable Executory Contracts with the Asbury GM Dealers that the Debtors intend to assume and assign.

2. The Asbury GM Dealers are parties to certain Assumable Executory Contracts with one or more of the Debtors.

3. Pursuant to the terms of the Sale Procedures Order, the Asbury GM Dealers expected the Debtors to provide them with Assumption and Assignment Notices for those Assumable Executory Contracts with the Asbury GM Dealers that the Debtors proposed to assume and assign. (Sale Procedures Order ¶ 10.) To date, the Asbury GM Dealers have not received any Assumption and Assignment Notices.

4. The Sale Order authorizes the Debtors and the Purchaser to close the 363 Transaction on or after 12:00 noon on July 9, 2009. (Sale Order ¶ 70.) Under the approved MPA, the Asbury GM Dealers executory agreements with the Debtors will be assumed and assigned at the time of closing. (MPA § 6.6(d).)

5. Although the Asbury GM Dealers do not oppose the assumption and assignment of their Assumable Executory Contracts with the Debtors, this assumption and assignment is without adequate notice to the Asbury GM Dealers of the proposed Cure Amounts and adequate assurance that the Asbury GM Dealers will be paid all monies due them at the time of

¹ Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Court’s Order Pursuant to 11 U.S.C. §§ 105, 363, and 365 and Fed. R. Bankr. P. 2002, 6004, and 6006 (I) Approving Procedures for Sale of Debtors’ Assets Pursuant to Master Sale and Purchase Agreement with Vehicle Acquisition Holdings LLC, a U.S. Treasury-Sponsored Purchaser; (II) Scheduling Bid Deadline and Sale Hearing Date; (III) Establishing Assumption and Assignment Procedures; and (IV) Fixing Notice Procedures and Approving Form of Notice, dated June 2, 2009 (the “Sale Procedures Order”), and Court’s Order (I) Authorizing Sale of Assets Pursuant to Amended and Restated Master Sale and Purchase Agreement with NGMCO, Inc., a U.S. Treasury-Sponsored Purchaser; (II) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases In Connection with the Sale; and (III) Granting Related Relief, dated July 5, 2009 (the “Sale Order”), as applicable.

assumption and assignment, including without limitation monies due as of the Commencement Date, under these Assumable Executory Contracts.

6. A debtor may not assume an executory contract unless the debtor “cures, or provides adequate assurance that the [debtor] will promptly cure” any default under the contract. 11 U.S.C. § 365(b)(1)(A). “Congress’s intent in imposing these conditions on the ability of a debtor to assume the contract was ‘to ensure that contracting parties receive the full benefit of their bargain if they are forced to continue performance.’” Eastern Air Lines, Inc. v. Insurance Co. of Penn. (In re Ionosphere Clubs, Inc.), 85 F.3d 992, 999 (2nd Cir. 1996) (quoting In re Superior Toy & Mfg. Co., 78 F.3d 1169, 1174 (7th Cir. 1996)). In resolving claims of default arising under an assumed contract, the Court should “restore the ‘debtor-creditor relationship . . . to pre-default conditions,’ bringing the contract back into compliance with its terms.” See ReGen Capital I, Inc. v. Halperin (In re Wireless Data, Inc.), 547 F.3d 484, 489 (2nd Cir. 2008) (alteration in original) (citations omitted) (quoting In re Taddeo, 685 F.2d 24, 26-27 (2d Cir. 1982)).

7. The Asbury GM Dealers are filing this protective objection to preserve their rights in the event that they disagree with Debtors’ ultimate proposed Cure Amount. The Asbury GM Dealers will work diligently with the Debtors and the Purchaser to try to resolve this Cure Objection without Court intervention but reserve all rights in the event that an agreement cannot be reached.

Dated: July 9, 2009

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